Vico Products Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO. Cases 7–CA–40016 and 7–CA–40572(2)

September 30, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On October 1, 1998, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel and the Charging Party each filed cross-exceptions and supporting briefs. The Respondent and the General Counsel also filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order,[2] and adopts the recommended Order as modified

As an initial matter, we agree with the judge, for the reasons stated by him, that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing its decision to relocate its caliper pin production from its Plymouth, Michigan facility, to its Louisville, Kentucky facility, and to lay off 33 employees at the Plymouth facility. We also agree with the judge that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union over the effects of that decision. Finally, we also agree with the judge, for the reasons stated by him, that the Respondent violated Section 8(a)(5) by failing and refusing to bargain with the Union over its decision to withhold an annual wage increase from the unit employees in August 1997. For the reasons set out below, however, we do not agree with the judge that the Respondent's employees' union activities were not a motivating factor in the Respondent's relocation decision. Accordingly, we reverse the judge and find that the relocation of the caliper pin operation and the layoff of the 33 unit employees were violative of Section 8(a)(3) of the Act.

A. Facts

The facts, as set out in the judge's decision and supplemented by uncontroverted testimony and record evidence, are as follows. Vico, the Respondent, is a family-owned business, which was founded in 1943. Robert Schultz (R. Schultz) is the Respondent's president and part owner. His son, Curt Schultz (Schultz), is also a part owner of the Respondent as well as its vice president and general manager. The Respondent began manufacturing caliper pins, which are used in the production of automobile disc brakes, at its Plymouth, Michigan facility, in late 1994. The Plymouth facility is 83,000 square feet in size. Deciding that caliper pins would be the critical product line for the future of the company, the Respondent applied to the Michigan Strategic Fund (MSF) for a $3 million loan on April 18, 1995. The MSF did not itself lend money, but issued industrial development revenue bonds, whose interest was tax exempt. These bonds were used to secure loans made by banks.

Thomas Schimpf, the assistant attorney general in the finance and development division of the Michigan attorney general's office, testified without contradiction that for federal tax purposes it was important that a borrowing under an MSF agreement be for a specific project at a specific location. Under the Respondent's MSF agreement, the project site was the Plymouth facility and the project was the renovation of that facility and the purchase and installation of new machinery, including machinery for use in the production of caliper pins. Schimpf further testified that since the purpose of the MSF was to strengthen the State economy, the Respondent would have to have given assurances of a reasonable intent to install the machinery at the project site and to maintain it there during the term of the loan. Schimpf further explained that if the Respondent decided to move equipment purchased under the MSF agreement from the Plymouth site, the Respondent would have to follow the procedures set out in section 9.2 of the agreement.[3] Schimpf explained that to ensure that the bonds' tax ex-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] For the reasons set out below, we shall reverse the judge and find that the Respondent's employees' union activities were a motivating factor in the Respondent's decision to relocate its caliper pin operation and to lay off 33 unit employees. We shall amend the judge's recommended Order accordingly.

The judge inadvertently failed to include an expungement provision in his recommended Order. We shall modify the judge's Order to include such a provision. We shall also modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.,* 335 NLRB 142 (2001). Finally, we shall substitute the attached notice for that set out in the judge's decision.

[3] Sec. 9.2 of the bond agreement provided that the Respondent could:

> with the consent of Bank, sell or remove any machinery and equipment comprising a portion of the Project so long as the removal of such machinery and equipment from the Project will not, in the opinion of the Bond Counsel, impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

emption would not be lost, a borrower would have to redeem an amount of the bonds equivalent to the value of the relocated machinery, and that the redemption should be done "contemporaneously" with the movement of machinery from the project site.

The Respondent received the loan proceeds on March 1, 1996. The MSF agreement (GC Exh. 32) provided, inter alia, that the Respondent would hire between 10 and 15 new employees and that it would keep the new machinery in Michigan for the term of the bonds which secured the loan. The bonds were 10-year bonds. After receiving the MSF loan, the Respondent renovated its Plymouth facility and purchased new machinery to meet its goal of increased caliper production. As part of the renovation, the Respondent converted an area of approximately 2300 square feet in the Plymouth facility, known as the "blue room," into a caliper pin production area.

In December 1995 the Respondent commenced an application process to apply for a tax abatement from the Township of Plymouth. The tax abatement was to apply, inter alia, to the new machinery that the Respondent would use in its caliper pin production and required that the machinery remain within Plymouth Township. The Respondent submitted its tax abatement application on May 31, 1996, and the tax abatement was granted January 29, 1997.

On May 10, 1996, the Respondent signed a lease to acquire 10,800 square feet of space in Louisville, Kentucky, which provided for the installation of 400-amp electric service and a 48-inch louver fan.[4] Sometime in April 1996, the Respondent sent Ambrake Corporation, its caliper pin customer in the Louisville area, an announcment of its intent to open a facility in Louisville.[5] The announcement, dated April 22, 1996, stated on its cover page "Welcome to Vico Products Company Warehouse & Distribution Center." (CP Exh. 28.[6]) This document stated, inter alia, that

> [m]uch work has gone into strategically locating the Louisville site and we would like to point out the advantages we see it serving Ambrake Corporation as we move forward in our valued business relationship. Additionally we would like to state that your Company was specifically in mind for this Center and we seek your input on how Vico can fully utilize this resource and tailor it to Ambrake's daily needs.

In June 1996 the Respondent held a meeting for all employees at the Elks Club across the street from the Plymouth facility to tell them about Vico's future plans. Schultz discussed Vico's plans for increased personnel and machinery. He forecast that the Respondent's caliper pin sales would go from approximately $1-1/2 to $6 million, and that in 1997 caliper pins would account for approximately 20 percent of the Respondent's gross sales. During the meeting, Schultz showed slides with concentric circles which indicated the location of existing and potential caliper pin customers (R. Exh. 12) and told the employees that the caliper pin business might be relocated to Louisville to be closer to the Respondent's customer base. Shultz did not mention any specific date for the relocation, however, and did not state that a definite decision had been made to move the caliper pin operation.

Between October and December 1996, Schultz generally discussed with Richard Stephenson, an Ambrake official, whether it would be prudent to move the Respondent's caliper pin operation to Louisville. Schultz testified that he was feeling Ambrake out, as Vico's largest caliper pin customer, whether it would be wise to undertake such a move. Schultz further testified that he independently decided in late December 1996 to relocate the caliper pin operation to Louisville and that he made this decision primarily because Louisville was closer to Ambrake, the Respondent's main caliper pin customer, and because of overcrowding in the blue room production area at the Plymouth facility. The judge assumed Schultz's testimony in this regard to be true and found as a matter of fact that Schultz independently made the decision to relocate the caliper pin operation from Plymouth to Louisville in December 1996. Although not mentioned by the judge, Schultz further testified that he told Frank Dietrich, the Respondent's general manager of operational support and a "close friend," of his relocation decision in March 1997, and that he also told Martin Cibich, the Respondent's general manager of operations who was hired in early March 1997, of the relocation decision soon after he was hired.

In February 1997,[7] the Union began its organizing drive at the Respondent's Plymouth facility. A number of the Respondent's employees formed the UAW Volunteer Organizing Committee (VOC). On March 3, Jim White, VOC's chairman, presented Schultz with a signed employee document (GC Exh. 17) which set out the rights of employees under Section 7 of the Act and explained what specific acts would be illegal during the Union's organiz-

[4] Subsequently, an addendum was executed which provided for a move-in date of October 1, 1996.

[5] The Respondent had opened another warehouse facility in Sumter, South Carolina, in 1993.

[6] CP Exh. 28 was supplied at the hearing in this case by Ambrake Corp. CP Exh. 28 includes the cover page, discussed above. GC Exh. 47, which is also the Respondent's April 22, 1996 announcement to Ambrake, is identical to CP Exh. 28, except that GC Exh. 47, which was furnished to the General Counsel by the Respondent, is missing the cover page which explains, as noted above, that the Louisville facility was to be used as a "Warehouse & Distribution Center."

[7] All dates hereafter refer to 1997 unless otherwise stated.

ing campaign. On March 6, the Union filed its election petition with the Board. On March 11, White gave Schultz a document entitled "Sensible Rules for a Fair Election" which was signed by 50 employees. (GC Exh. 18.) Schultz read the document, but would not sign it. A union newsletter, which listed the names of Vico employees who supported "Sensible Rules for a Fair Election," was distributed throughout the Plymouth facility about March 14. (GC Exh. 20.) Finally, it is undisputed that the Respondent was aware throughout the campaign that employees openly wore union buttons to show their support for the UAW. The election was held on April 17, and the Union was certified as the exclusive collective-bargaining representative of the unit employees on April 25.[8] In May, Phillip Keeling, a UAW staff representative, was assigned to assist the newly certified Union obtain its first collective-bargaining agreement with the Respondent.

Sometime in March, i.e., before the election, R. Schultz, Vico's president, walked over to two of the unit employees, Jacqueline Whitehead and Lucy Arnold, while they were working in the blue room. He asked, "Do you know what's going on around here?" They both responded no. R. Schultz then said, "Lucy, you know, don't you? He added, "Well, if a Union gets out here, a lot of people could be laid off." R. Schultz then put his hand on Whitehead's shoulder and stated, "If the Union gets in here, you can be laid off."

In late March or early April, and again prior to the election, Karen Dearing, the Respondent's general manager of organizational support and comptroller, came up to a group of employees that included Fred Nitz as they were discussing the pros and cons of the Union and said to the group, "You know that there are changes that are going to be made when the Union is voted in and there may or may not be jobs left. Nothing is in stone, nothing is permanent."

On June 3 Cibich telephoned Stephen Daugherty, the owner of Doc's Crane & Rigging, and asked Daugherty to come to the Plymouth plant on Sunday, June 8, to look at certain machines that were to be moved to another facility. On June 8 Daugherty went to the Plymouth facility and met with Cibich. No employees were present. During a tour of the facility, Daugherty, having noticed UAW stickers on toolboxes, asked Cibich whether there would be any labor problems if the equipment were relocated. Cibich stated that he did not believe there would be a problem. Cibich told Daugherty that he wanted the equipment moved from the Plymouth facility to Louisville on July 4.

[8] The unit was composed of the Respondent's production and maintenance employees at its Plymouth facility.

On June 24 Daugherty telephoned UAW Representative Keeling, told him of his June 8 visit to the Respondent's Plymouth facility, and informed Keeling that, after viewing the UAW insignia throughout the facility, he had become suspicious when Cibich had said that the Respondent wanted Daugherty to move six machines from the Plymouth facility to Louisville on July 4. Keeling responded that he was not aware of any plans to move machinery from the plant and said that he intended to raise the subject with Vico in a meeting scheduled for June 27. Also on June 24, the Respondent executed a 1-year lease on a second facility of approximately 3600 square feet in Louisville. This facility was close to, but not connected to, the Respondent's first Louisville facility.

On June 25, in a meeting with employees on the Union's bargaining committee, Keeling asked if they had heard anything about the relocation of machinery to Louisville. None of the employees on the committee had heard anything about such a move. Then, on June 27, Keeling met with Schultz at the Plymouth facility. During the meeting, Keeling told Schultz that he had heard rumors that Vico planned to move some of its equipment and operations to the south. Schultz responded, "that may be something that may have to be considered in the future, but as it stood right then, there were no immediate plans to move anything out of the plant." Keeling then requested that Schultz contact him if the matter came up because the Union had a right to discuss the issue.

On July 2 Schultz informed Ambrake that the Respondent was relocating its caliper pin operation to Louisville.[9] Then, on July 3 Schultz held an employee meeting at the Plymouth facility. He informed the employees that because of overcrowding in the blue room, and since caliper pin customers were closer to Louisville, it was necessary to implement a reduction of employees due to the transfer of the caliper pin operation to the Respondent's Louisville facility. During his talk, Schultz showed the employees the same slide with concentric circles showing the proximity to the Louisville facility of the Respondent's cus-

[9] Ambrake responded to Vico's announcement on July 8 with an urgent request to discuss nine concerns which Vico's sudden relocation announcement raised for Ambrake. (CP Exh. 25.) The letter stated, inter alia (emphasis in original):

> Below is a list of concerns which we need to address immediately with Vico to help in the process of the moving of the manufacturing to Louisville, KY from Plymouth MI. We cannot determine exactly what is required until we know exactly what processes you are changing or what changed on every part number. We would like to see a *before* and *after* process location for every operation of every part number from Vico. We would like to have this information at least twenty-four hours before our next meeting so we can determine some plan of action. We would also like to meet with you *this week* at Ambrake to discuss timing and requirements with all interested parties at Ambrake.

tomers as he had shown at the employee meeting at the Elks Club in June 1996 (R. Exh. 12).[10] Schultz explained that it would be necessary to lay off 33 employees, those who had been hired since January 1995. Schultz added that applications would be accepted from anyone who was interested in applying for a job in Louisville.

Also on July 3, Keeling, who was at his vacation cottage in northern Michigan, received a telephone call from his secretary who informed him that she had just received a fax transmission from Schultz concerning the move of the caliper pin operation from the Plymouth facility to Louisville. After receiving the fax, Keeling drafted a response, faxed it to his secretary, who sent the response in letter form to Schultz. Keeling's July 3 letter stated, inter alia, that

> I specifically asked you [at the June 27 meeting] about any plans Vico might have to move work from Plymouth to your facilities in the South. You did not indicate any such plans. Six days later, I now receive your letter announcing the company's "gradual realignment of its core business," and the news you are moving 29 jobs to Kentucky. I find it hard to believe that you were not aware of this plan when we spoke last Friday.

Also on July 3, Carl Bantau, the union president, received a call from a Vico employee who informed Bantau of the just-announced layoff of Vico employees. Bantau decided that the Union would put up an informational picket line at the Plymouth facility on July 4.

At 6 a.m. on July 4, Cibich telephoned Daugherty at his home and asked Daugherty whether he was in the Plymouth area and ready to proceed with the job. Daugherty responded that he would not do the job without a signed proposal. At 7:20 a.m., Cibich then telephoned Thomas Rahburg, the owner of Westland Rigging, and asked him whether he could come to the Plymouth facility immediately to look at equipment that needed to be moved. Rahburg went to the Plymouth facility about 8 a.m. Cibich showed him the equipment that needed to be moved and asked him if he could do the work. Rahburg said that he could. There was no discussion of a price on July 4. Rahburg returned to his yard to prepare for the move.

About 6:30 a.m. on July 4, Bantau met unit employee and bargaining committee chairman, Randy White, and UAW Official Jim Gersik at the Plymouth facility. About 10 a.m., they observed the Plymouth police lead three flatbed tractor trailers and two pickup trucks through the plant entrance to the back of the plant. Later that day, the trucks, loaded with the machinery to be relocated, left the Plymouth facility. On July 7 Bantau and others saw the caliper pin machinery from the blue room being placed inside the two Vico facilities in Louisville. They also saw electricians installing electrical wiring.

Finally, Thomas R. McLean, a vice president in the commercial loan department of NBD Bank, the bank that loaned the Respondent the $3 million, testified without contradiction that he learned in about September that the Respondent had acquired a facility in Louisville and that it had transferred machinery valued at over $1 million to that facility from Plymouth.[11] Thereafter, McLean advised Schultz that the bonds had to be redeemed to the value of the machinery moved out of state. On November 7 the Respondent redeemed $1.3 million of the bonds with funds borrowed on a short-term loan basis from NBD Bank. Finally, on its year-end tax return for 1997, the Respondent notified Plymouth Township that machinery which had been subject to the tax abatement had been moved out of state.

B. The Judge's Decision

Applying the analysis set out in *Dubuque Packing Co.,* 303 NLRB 386 (1991), enfd. sub nom. *Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24 (D.C. Cir. 1993), the judge found that the relocation decision was a

[10] R. Exh. 12 is a map of the Ohio Valley region. Schultz testified that the Respondent's Louisville facility was the star at the center of the concentric circles and that all around were the Respondent's "customers within the close proximity of the Louisville facility." (Tr. 1407–1408.) Schultz further testified that only Ambrake and Bosch were actually caliper pin customers in December 1996, and that at that time the Respondent was trying to win other companies listed on the map, some of whom were customers of the Respondent for other items, as caliper pin customers (Tr. 633–634; 1411–1412). Schultz further testified that on July 4, the date of the relocation, Ambrake and Bosch were still the Respondent's only caliper pin customers (Tr. 941–942). Of these customers, only Ambrake was in Kentucky. Bosch was located in St. Joseph, Michigan (Tr. 945), and was therefore actually closer to the Respondent's Plymouth facility than it was to the new Louisville warehouse and distribution center. In his decision, however, the judge stated that the map "depicted concentric circles with the location of the *caliper pin customers* and their proximity to Louisville." (Emphasis added.) Based on his erroneous finding that the map showed only the Respondent's caliper pin customers, the judge construed Schultz' showing of the same map at both the June 1996 employee meeting at the Elks Club and at the July 3 employee meeting as evidence that the Respondent's decision to relocate was motivated by legitimate business reasons. As explained above, however, only one of the companies listed on the map, Ambrake, was actually a caliper pin customer of the Respondent during the relevant time period. The other companies included on the map were, at best, only potential caliper pin customers during that time.

[11] In a September 29 memo to the file (CP Exh. 32), McLean stated, inter alia:

> In late July subject fired 33 plant workers, and transferred $1,20[,000] of equipment to the Kentucky operation. This effectively transferred $7,000[,000] of caliper pin production to Kentucky. While [Schultz] maintains that this was driven by space constraints in Plymouth and customer service concerns, the recent unionization of the Plymouth operations may have been a factor.

mandatory subject of bargaining, that labor costs, both direct and indirect, were a factor in the Respondent's decision to relocate the caliper pin operation, and that the Union could have offered labor cost concessions that "possibly could have persuaded Vico, had it been notified and permitted to submit bargaining proposals prior to July 3, to have retained the Bosch caliper pin manufacturing work at the Plymouth facility[.]" On this basis, as further explained in his decision, the judge found that the Respondent violated Section 8(a)(5) by unilaterally implementing its decision to relocate the caliber pin operation and to lay off the 33 unit employees.[12] To remedy these violations, the judge ordered that the Respondent restore its caliper pin operation to the Plymouth facility and that it make whole and reinstate the 33 laid off employees.

Having found that the Respondent violated Section 8(a)(5), the judge then considered whether, as alleged in paragraph 15 of the complaint in Case 7–CA–40016, the relocation and layoffs were discriminatorily motivated and therefore were violative of Section 8(a)(3) of the Act. The judge first summarily concluded that the caliper pin operation was not relocated to Louisville because of antiunion sentiment. Then, applying a *Wright Line* analysis[13] as a "[m]oreover" argument, he found "under *Wright Line* that Vico would have taken the same action even in the absence of the employees[']] protected activity." Accordingly, he recommended that paragraph 15 of the complaint be dismissed.

In their cross-exceptions, both the General Counsel and the Charging Party except to the judge's failure to find that the relocation of the caliper pin operation and the layoff of the 33 employees were violative of Section 8(a)(3). The General Counsel and/or the Charging Party argue that the record evidence does not support the judge's conclusion that Schultz made the relocation decision in December 1996, some 2 months before the Union came on the scene. They further assert that the judge erred in his *Wright Line* analysis by failing to properly consider whether the relocation decision was motivated by the employees' union activities. As discussed below, we find merit in these exceptions.

C. Analysis

First, we adopt the judge's findings that the Respondent violated Section 8(a)(5) for the reasons he set forth. We also agree with the judge that the remedial steps he ordered are necessary to remedy the Respondent's unlawful conduct.[14]

Next, we turn to the 8(a)(3) allegations. Under *Wright Line*, in order to meet his initial burden to show that the relocation and layoffs were discriminatorily motivated, the General Counsel must show by a preponderance of the evidence that the employees' union activities were a motivating factor in the Respondent's decision to relocate the caliper pin operation and to lay off the 33 employees. "Thus, the General Counsel must show that the employees engaged in union activity, that the Respondent had knowledge of that activity, and that the Respondent demonstrated anti-union animus." *Regal Recycling, Inc.,* 329 NLRB 355, 356 (1999).[15] Further, as explained in *Special Mine Services*, 308 NLRB 711, 721 (1992), unlawful motivation can be inferred from circumstantial evidence, including the timing of an employer's action. Contrary to the judge, we find that the General Counsel has shown that the employees' union activities were a motivating factor in the Respondent's decision to relocate the caliper pin operation and to layoff the 33 unit employees.

As an initial matter, we observe that the Respondent implemented the relocation and layoffs on July 3 and 4, less than 3 months after the Union had won the election and been certified as the bargaining representative of the Respondent's employees. As to the Respondent's knowledge of the employees' union activities, as early as March, White, VOC's chairman, gave Schultz a document signed by employees that set out employee rights under Section 7 of the Act. Also in March, White presented Schultz with a document signed by 50 employees, entitled "Sensible Rules for a Fair Election," which Schultz refused to sign. Finally, it is undisputed that the Respondent was aware throughout the Union's organizing campaign that employees openly wore union buttons to show their support for the UAW. Thus, the timing of the relocation and layoffs, shortly after the employees' union activities culminated in

[12] As noted above, the judge further found, and we agree, that the Respondent also violated Sec. 8(a)(5) by failing to bargain in good faith with the Union over the effects of its relocation decision.

[13] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983).

[14] The Respondent may introduce at compliance any evidence not available prior to the hearing bearing on the appropriateness of the restoration remedy. See *Lear Siegler, Inc.,* 295 NLRB 857, 860–862 (1989).

[15] As explained in *Regal Recycling, Inc.,* 329 NLRB at 356 (footnote omitted):

> Under the test set out in *Wright Line*, in order to establish that the Respondent unlawfully [relocated its caliper pin operation and laid off the 33] employees based on their union activity, the General Counsel must show by a preponderance of the evidence that the protected activity was a motivating factor in the Respondent's decision to [relocate and layoff the employees]. Thus, the General Counsel must show that the employees engaged in union activity, that the Respondent had knowledge of that activity, and that the Respondent demonstrated anti-union animus. Once the General Counsel has made the required showing, the burden shifts to the Respondent to demonstrate that it would have taken the same action even in the absence of the protected union activity.

the Union's election victory and certification, and the Respondent's knowledge of its employees' union activities support the General Counsel's contention that the relocation and layoffs were unlawfully motivated. We next consider whether the Respondent exhibited antiunion animus. Contrary to the judge, we find that it did.

The judge found that the Respondent's president, R. Schultz, had stated to two employees in March that "if a Union gets out here, a lot of people could be laid off." Having placed his hand on the shoulder of one of the employees, he then added, "If the Union gets in here, you can be laid off." The judge further found that Karen Dearing, who was the Respondent's comptroller as well as its general manager of organizational support, had said to a group of employees, including Fred Nitz, in late March or early April, that "You know that there are changes that are going to be made when the Union is voted in and there may or may not be jobs left. Nothing is in stone, nothing is permanent."

Although the judge found that R. Schultz and Dearing made the statements attributed to them, he nevertheless found that they were not evidence of antiunion animus because (1) these statements "were not the subject of individual unfair labor practice charges filed by the Union nor were they independently alleged in the complaint as Section 8(a)(1) violations of the Act"; (2) at the time of R. Schultz's statement, he was "inactive in the day to day operations of Vico, and only visited the facility once per week for 20 to 25 minutes per visit," and (3) that "even if Dearing made the statement attributed to her . . . it [was] protected under Section 8(c) of the Act." We disagree.

We find that R. Schultz and Dearing impliedly threatened loss of employment if the Union won the election. Their unsupported statements that layoffs could occur and that there might or might not be jobs left if the Union got in are indistinguishable from the statement that "the employees had made a big mistake [in continuing to pursue union representation] that might [mean] their . . . jobs" found to be evidence of antiunion animus in *Carter & Sons Freightways*, 325 NLRB 433, 438 (1998). Merely because these statements were not alleged as independent 8(a)(1) violations does not vitiate the force of the threats contained therein or diminish the weight of these implied threats of job loss as evidence of antiunion animus and motivation.[16] See, e.g., *Bandag, Inc. v. NLRB*, 583 F.2d 765, 767 (5th Cir. 1978) (acts displaying antiunion animus, though not alleged as independent violations, are "relevant in assessing the violations that were alleged").

In reaching this conclusion, we reject the judge's further findings that the fact that R. Schultz only visited the Respondent's facility once a week for a short time somehow vitiated the force of his threat of job loss and that Dearing's statement was protected by Section 8(c). As to the former, at the time that he made the threat, R. Schultz was still a part owner and president of the Respondent and was therefore in a position to carry out the threatened layoffs if the Union won the election. In these circumstances, the mere fact that he may have visited the facility only once a week does not lessen the impact of his threat. As to the latter, the judge stated summarily that it was protected under Section 8(c) of the Act. As explained above, however, Dearing's statement impliedly threatened employees with job loss through layoffs if the Union got in. Such threats are not protected by Section 8(c). Moreover, the fact that Dearing was the Respondent's comptroller, and was therefore fully informed of the Respondent's financial condition, would make her threats more credible to the employees and therefore increase their impact.

We also find, contrary to the judge, that there is other evidence in the record which supports the General Counsel's case that the relocation and layoffs were unlawfully motivated. Thus, although the Respondent had leased its first facility in Louisville in May 1996, and therefore before the Union came on the scene, the fact is that the Respondent, as described above (fn. 6 and accompanying text), announced that it intended to use that facility as a warehouse and distribution center. It was only after the Union had been certified, and immediately prior to the relocation, that the Respondent leased additional space at a second facility in Louisville so that it could relocate the caliper pin machinery from Plymouth to Louisville. Thus, contrary to the judge, we infer from the Respondent's original leasing of space in Louisville in May 1996 for warehousing and distribution and then its sudden leasing of additional space in Louisville for manufacturing in June 1997, that the employees' union activities in the intervening period were a motivating factor in the Respondent's decision to relocate the caliper pin operation to Louisville.[17]

We also agree with the General Counsel that the Respondent's entering into the MFS agreement in 1996 evidences the Respondent's intention to maintain its caliper

[16] As explained in *Reno Hilton*, 320 NLRB 197, 209 (1995):

> Threats to eliminate the employees' source of livelihood have a devastating and lingering effect on employees. [*Milgo Industrial*, 203 NLRB 1196, 1200 (1973)], enfd. mem. 497 F.2d 919 (2d Cir. 1974). An inference may be drawn from the animus behind such threats, which the discharge would gratify, that the animus was the true reason for the discharge. *General Thermo*, 250 NLRB 1260, 1261 (1980); *Best Products Co.,* 236 NLRB 1024, 1026 (1978).

[17] The fact that the Respondent showed the employees the same map of the Respondent's actual and potential caliper pin customers in the Louisville area at both the Elks Club meeting in June 1996 and at the July 3 employee meeting does not argue against such a conclusion for the reasons set out at fn. 10, supra.

pin operation at the Plymouth facility for the indefinite future. That agreement required the Respondent to keep the caliper pin machinery in Plymouth for the term of the 10-year bonds. The judge found that the Respondent was not in default of the agreement at the time of the hearing and that this fact somehow mitigates against a finding that the Respondent intended to keep the caliper pin operation in Plymouth when it entered into the MSF agreement. Such an assessment cannot withstand scrutiny. As Schimpf testified, if any equipment to which the MSF agreement applied were moved out of state, the Respondent should "contemporaneously" with the relocation redeem bonds of equal value to the relocated machinery in order not to lose the Federal tax exemption or be in default. The fact is, however, that it was only after McLean, an NBD Bank official, notified the Respondent of the redemption obligation over 2 months after the relocation that the Respondent took steps to remedy the problem. Even then, it could only redeem the bonds through a short-term loan secured from the NBD Bank. The Respondent's careful preparations to get the MSF loan with its announced intent to keep the caliper pin operation in Plymouth, preparations which occurred prior to the Union's appearance, stand in sharp contrast to the Respondent's sudden breach of the terms of the agreement in July—after the Union came on the scene—and to its abrupt departure from its avowed intent to keep the caliper pin operation in Plymouth. We infer from this dramatic change that the Union's appearance was a motivating factor in the Respondent's relocation decision. Contrary to the judge's finding, the fact that the Respondent was not in default of the MSF agreement at the time of the hearing does not argue otherwise.

The Respondent's intent to keep the caliper pin operation in Plymouth prior to the onset of the union campaign is also evidenced by its successful efforts to gain a tax abatement from the Township of Plymouth for the caliper pin machinery. Less than 6 months after receiving the tax abatement, however, and less than 3 months after the Union won the election, the Respondent moved that machinery out of Plymouth Township. We also infer from this sudden departure from the Respondent's documented intention to keep the caliper machinery in Plymouth that the appearance of the Union was a motivating factor in the Respondent's decision to relocate that machinery.

Finally, we find that the Respondent's stealth in carrying out the relocation—its refusal to inform Keeling that the relocation was imminent in spite of his request that he be so informed, and its sudden secreting of the equipment out of the Plymouth facility over the July 4 holiday—further evidence the Respondent's desire to avoid, and be rid of, the Union. The Respondent's stealth in relocating the equipment is further evidenced by its failure to inform Ambrake, its caliper pin customer in the Louisville area, of the relocation until only a few days before it occurred. The sudden notice to Ambrake and the absence of an opportunity for Ambrake to share in the planning of the relocation stand in sharp contrast to the Respondent's careful planning for the opening of its warehousing and distribution facility in Louisville in 1996 and its inclusion of Ambrake at the planning stage of that project. Indeed, the sudden relocation of the caliper pin machinery raised great concerns for Ambrake, as evidenced by its July 8 letter to the Respondent (see fn. 9, above). For all these reasons, we find that the General Counsel has satisfied its burden of establishing that the employees' union activities were a motivating factor in the Respondent's decision to relocate the caliper pin operation and to lay off the 33 unit employees.

Having found that the General Counsel has satisfied his initial burden to show, under *Wright Line,* that the relocation and layoffs were unlawfully motivated, we must next consider whether the Respondent has "demonstrate[d] that it would have taken the same action even in the absence of the protected union activity." *Regal Recycling, Inc.*, supra at 356. In concluding that the relocation decision was not unlawfully motivated, the judge found that Schultz made the decision in December 1996, before the Union appeared on the scene. In so finding, the judge assumed to be correct Schultz' testimony that he had discussed such a relocation in the fall of 1996 with Stephenson, an Ambrake official, and that he had decided to relocate the caliper pin operation to Louisville because, as the judge characterized Schultz' testimony, most of the Respondent's caliper pin customers were in the Louisville area and because of overcrowding in the blue room. For the following reasons, we find the judge's analysis of this issue flawed and his conclusion erroneous.

First, at the hearing in this case, the judge simply accepted as true Schultz' testimony that he made the decision to relocate the caliper pin operation to Louisville in December 1996. He did this because, in his view, he (the judge) was "not charged [with] when the decision was made, [he was] charged with what happened on July 3rd." (Tr. 706.) Apparently, the judge believed that if he were to permit the General Counsel and the Charging Party to question Schultz about when he made the decision to relocate, he would be expanding the "parameters of this case" beyond the allegations contained in the complaint.[18] In

[18] In denying the General Counsel and the Charging Party an opportunity to question Schultz about his testimony to the effect that he had made the relocation decision in December 1996, the judge stated (Tr. 710):

> There's nothing that you [counsel for the General Counsel] have articulated that this case is grounded on any incidents prior to [July

our view, the judge misconstrued the efforts to question Schultz about the date that he made the relocation decision. The questioning was not intended to expand the parameters of the complaint, but rather to test the Respondent's defense to the 8(a)(3) allegation contained in paragraph 15 of the complaint in Case 7–CA–40016 (i.e., that the relocation decision could not have been unlawfully motivated because Schultz made that decision in December 1996 and thus before the Union appeared on the scene). Upon the General Counsel's and the Charging Party's special appeal of the judge's ruling to the Board, the Board directed the judge to permit the General Counsel and the Charging Party to examine Schultz regarding his testimony that he had made the relocation decision in December 1996. In his decision, however, the judge, without further analysis, simply adhered to his finding that Schultz made the decision in December 1996. For the following reasons, we find that the record evidence does not support a finding that Schultz made the relocation decision in December 1996. We further find that Schultz' testimony that he made the relocation decision in December 1996, which the judge simply assumed to be true,[19] standing alone, cannot suffice as a defense to the 8(a)(3) allegation.

In support of his finding that Schultz made the relocation decision in December 1996, the judge first credited Schultz's testimony that he discussed the possibility of moving the caliper pin operation to Louisville with Stephenson in the fall of 1996. Even if this is true,[20] the fact that Schultz discussed the *possibility* of relocating the caliper pin machinery does not support a finding that he did, in fact, make that decision, or that he made it at a specific time, i.e., December 1996.

The judge also assumed to be accurate Schultz' asserted reasons for making the relocation decision, i.e., that the blue room was overcrowded and that the Respondent's caliper pin customers were in the Louisville area. As to the former issue, even if the blue room were crowded, the fact is that the Respondent opened its first facility in Louisville as a warehouse and distribution facility. Thus, the opening of that facility could not have been to alleviate the alleged overcrowding in the blue room. Further, there was no announcement or document that appeared before the onset of union activity, which evidenced the Respondent's intention to use that facility for manufacturing at some time in the future. In fact, just the opposite is true. The MSF agreement and the Township of Plymouth tax abatement documents evidence the Respondent's clear intention to keep the caliper pin operation in Plymouth for the indefinite future. The opening of the first facility in Louisville in 1996 does not argue otherwise, for that was to be a warehouse and distribution facility, not a manufacturing facility. Further, when the Respondent did relocate the caliper pin machinery to Louisville after the Union won the election, it had to lease a second facility in Lousiville in June to house some of that machinery.

As to the second issue, as explained at fn. 10 supra, Schultz testified that in December 1996, the Respondent's only caliper pin customer in the Louisville area was Ambrake, and that the Respondent's other caliper pin customer, Bosch, was located in Michigan. Thus, the judge's characterization of Schultz' testimony to the effect that he (Schultz) decided to move the caliper pin operation to Louisville in December 1996 because its caliper pin customers were in that area cannot withstand scrutiny and argues against a finding that he decided to relocate the caliper pin operation to Louisville in December 1996. Since Ambrake and Bosch were still the Respondent's only caliper pin customers as of July 4, these facts also support a finding that the employees' union activities, and not an expanding customer base in the Louisville area, were a motivating factor in the Respondent's relocation decision.

Thus, one is left with only Schultz' testimony that he made the relocation decision in December 1996. We find that this unsupported testimony does not satisfy the Respondent's *Wright Line* burden of showing that the reloca-

1997]. You put in some evidence that in March of 1997, allegedly some statements were made by Mr. Robert Schultz to two individual employ[ee]s. That's it, that's all I've heard in the General Counsel's case and you told me you don't have anymore [sic] witnesses, so that's all I have, counselor, so we're not expanding the parameters of this case.

Subsequently, the judge further explained his position (Tr. 787):

As I pointed out . . . in the General Counsel's opening statement, in the General Counsel's presentation of evidence throughout this case to date and in the Complaint, there are no allegations raised by the General Counsel that the decision to move by the Respondent in December of 1996 was in any way influenced by anti-union sentiment, and I want the record to so note that.

[19] As explained in *Panelrama Centers*, 296 NLRB 711 fn. 1 (1989):

[T]he Board has held consistently that when "credibility resolutions are not based primarily upon demeanor . . . the Board itself may proceed to an independent evaluation of credibility." *J. N. Ceazan Co.,* 246 NLRB 637, 638 fn. 6 (1979), and cases cited therein.

In his dissent in *E.S. Sutton Realty*, 336 NLRB 405 (2001), Member Walsh stated that he would not second-guess a judge's factual findings if they were based on thoroughly considered credibility resolutions. In this case, however, he agrees with his colleagues, for the reasons stated infra, that the judge, based in part on a misunderstanding of the General Counsel's allegations, simply assumed that Schultz' testimony was correct, without thoroughly analyzing the record and making a credibility resolution concerning that testimony.

[20] Although Stephenson was called as a witness at the hearing, the Respondent did not question him about this issue. Thus, Schultz' testimony is not corroborated.

tion was not discriminatorily motivated. Although Schultz further testified that he told Dietrich, the Respondent's general manager of operational support, and Cibich, the Respondent's general manager of operations, in March of his decision to relocate the caliper pin operation, the Respondent called neither of these individuals to testify at the hearing. Yet both of these high-ranking management officials were still employed by the Respondent at the time of the hearing. In these circumstances, we draw an adverse inference that Dietrich and Cibich, if called as witnesses, would have testified adversely to the Respondent on that issue.[21] In sum, in March, the Respondent threatened its employees with loss of jobs through layoff if the Union won the election, and, in July, and after the Union had won the election, the Respondent made good on its threat.

Accordingly, we find that the Respondent violated Section 8(a)(3) by relocating its caliper pin operation from Plymouth to Louisville and by laying off unit employees as a result of the relocation. On this basis also, we find that, as part of the remedy for its unfair labor practices, the Respondent must restore the caliper pin operation to its Plymouth facility and reinstate, with backpay, the employees laid off on July 3.[22]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Vico Products Company, Plymouth, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as new paragraph 1(b) and reletter the following paragraph.

"(b) Relocating its caliper pin operation from its Plymouth, Michigan facility and laying off its employees because of their union activities.

2. Insert the following as new paragraph 2(b) and reletter the following paragraphs.

"(b) Within 14 days from the date of this Order, expunge from its files any reference to the July 3, 1997 layoffs which resulted from the Respondent's unlawful relocation of its caliper pin operation, and within 3 days thereafter, notify the employees laid off on July 3, 1997, in writing that this has been done and that evidence of these unlawful layoffs will not be used as a basis for future personnel actions against them."

3. Substitute the following for paragraph 2(d).

"(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to bargain collectively and in good faith with International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, (UAW), AFL–CIO, as the exclusive collective-bargaining representative of the employees in the appropriate unit by unilaterally eliminating unit positions, relocating or reassigning work to nonunit personnel, or otherwise changing the wages, hours, and other terms and conditions of employment of unit employees without prior notice to or affording the Union an opportunity to negotiate and bargain concerning such changes or the effects of such changes. The appropriate unit consists of:

> All full-time and regular part-time production and maintenance employees, including pressroom employees, thread roll employees, toolroom employees, quality control employees, shipping employees, inventory control employees, sorting/assembly employees, header employees, chucker employees and maintenance employees employed by the Employer at its

[21] See, e.g., *International Automated Machines*, 285 NLRB 1122, 1123 (1987), explaining that the Board has accepted the "familiar rule" that

> when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. (2 Wigmore, *Evidence*, § 286 (2d ed. 1940); McCormick, *Evidence*, § 272 (3d ed. 1984). See *Greg Construction Co.,* 277 NLRB 1411 (1985); *Hadbar*, 211 NLRB 333, 337 (1974).)

[22] As explained at fn. 14 supra, the Respondent may introduce at compliance evidence not previously available that bears on the appropriateness of the restoration remedy.

facility located at East Ann Arbor Road, Plymouth, Michigan; but excluding all office clerical employees, other represented employees, guards and supervisors as defined in the Act.

WE WILL NOT relocate our caliper pin operation from our Plymouth, Michigan facility and WE WILL NOT lay off our employees because of their union activities.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees without having first bargained with the Union in good faith to impasse with respect to the payment of the annual across-the-board wage increase.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore and resume our Plymouth, Michigan caliper pin operation, in a manner consistent with the level of operation that existed before the unit positions were eliminated on July 3, 1997, and WE WILL offer the employees laid off on July 3, 1997, immediate and full reinstatement to their former jobs, or to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and benefits they may have suffered from the time of their layoffs to the date of our offer of reinstatement, with interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any reference to the July 3, 1997 layoffs, caused by the relocation of the caliper pin operation from our Plymouth, Michigan facility, and WE WILL, within 3 days thereafter, notify the employees laid off on July 3, 1997, in writing that this has been done and that evidence of these unlawful layoffs will not be used as a basis for future personnel actions against them.

WE WILL immediately put into effect an across-the-board wage increase, and continue such increase in effect until we negotiate with the Union in good faith to a collective-bargaining agreement or reach an impasse after bargaining in good faith, and WE WILL make whole our unit employees for any loss of pay they may have suffered due to our unilateral change, with interest.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and embody any understanding reached in a written agreement.

VICO PRODUCTS COMPANY

Dennis R. Boren, Esq. and *Michael O'Hearon, Esq.,* for the General Counsel.

Steven B. Horowitz, Esq. and *Mark S. Ruderman, Esq.,* of Springfield, New Jersey, for the Respondent-Employer.

Michael B. Nicholson, Esq., of Detroit, Michigan, for the Charging Party-Union.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me in Detroit, Michigan, on March 2–6, and May 4–8, 1998, pursuant to a complaint and notice of hearing (the complaint) issued by the Regional Director for Region 7 of the National Labor Relations Board (the Board) in Case 7–CA–40016 on September 19, 1997,[1] and in Case 7–CA–40572(2) on February 26, 1998. The complaint, based on charges filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO (the Union or UAW), alleges that Vico Products Company (the Respondent or Vico) has engaged in certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent filed timely answers and denied that it committed any violations of the Act.

Issues

The complaint in Case 7–CA–40016 alleges violations of Section 8(a)(1), (3), and (5) of the Act based on the Respondent's unlawful conduct on July 3 when it unilaterally announced its decision to eliminate the caliper pin operation at its Plymouth, Michigan plant, and relocate the machinery and work to its Louisville, Kentucky facility, and on July 4, when the Respondent relocated all of the caliper pin work and machinery from its Plymouth location to its Louisville facility, and laid off approximately 33 employees in the Plymouth facility. The complaint in Case 7–CA–40572(2) alleges a violation of Section 8(a)(1) and (5) of the Act by the Respondent's failure in August 1997 to continue its practice of granting an annual across-the-board wage increase to employees in the unit.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties, I make the following.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the manufacture and nonretail sale of brake caliper components, with an office and place of business in Plymouth, Michigan, where it annually sold and shipped from its Plymouth facility goods valued in excess of $50,000 directly to points outside the State of Michigan. Respondent also operates facilities in Louisville, Kentucky, and Sumter, South Carolina. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1997 unless otherwise indicated.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. The Respondent's operations prior to February 1997

Vico is a family owned business that was started in 1943 by Leo Schultz, the father of president and part owner, Robert R. Schultz (R. Schultz), and the grandfather of vice president/general manager/part owner, Curt R. Schultz (Schultz). The business was moved to its present Plymouth, Michigan location in 1965.

Vico started the manufacture of caliper pins in late 1994.[2] Since the Respondent determined that the caliper pin operation was to be the critical product line for the future of the company, it applied on April 18, 1995, to the Michigan strategic fund for a $3-million loan. The loan proceeds were received on March 1, 1996, and Vico immediately commenced renovation of its Plymouth facility and purchased new manufacturing equipment to meet its stated goal of increased production (GC Exhs. 35–39). An area of approximately 2300 square feet, known as the "blue room," was converted for the production of caliper pins. In order to be in compliance with the provisions of the loan agreement (GC Exh. 32), the Respondent committed to hire approximately 10–15 new employees and to purchase and retain equipment in Plymouth, Michigan.[3] In December 1995, Respondent also commenced the application process to apply for a tax abatement from the Township of Plymouth.

On May 10, 1996, Vico signed a lease to acquire 10,800 square feet of space and to install 400-amp electric service and a 48-inch fan with control wiring in Louisville, Kentucky. The zoning of the property was approved for "light manufacturing" (R. Exh. 13). Thereafter, an addendum was executed to reflect a move in date of October 1, 1996.

In June 1996, an all employee meeting was held on a Saturday at the Elks club to apprise employees about the future of Vico. Schultz told employees about Vico's plan for increased personnel and machinery, while incorporating the influence of technology. It was forecasted that in the next 4 years caliper pin sales would jump from $1-1/2 to potentially $6 million, and that in 1997, caliper pins would account for approximately 20 percent of gross sales. During the course of the meeting, Schultz showed slides with concentric circles indicating the location of existing caliper pin customers and told the employees that the caliper pin business may be relocated to Louisville, Kentucky, because of its proximity to the customer base. Schultz did not mention any specific dates or that a definite decision had been made to relocate the caliper pin operation to Louisville.

In or around April 1996, Vico provided its primary caliper pin customer, Ambrake Corporation, an advanced announcement of its intent to open the Louisville facility. It states in pertinent part:

> Over the last few years our customer base in the Ohio River Valley Region has been on a large growth curve. As a result of this demand, and our quest to provide our customers world class products and service, Vico Products is very proud to officially announce the opening of our new facility in the Middletown Industrial Park. We now will only be 55 miles (one hour) from your plant vs. 410 miles (seven hours). Ambrake will be able to pick-up daily or several times a day depending on the demand. We are excited about beginning a cost saving returnable container system with your help. Needless to say we are excited and we hope you too view this as a convenient, efficient and cost effective venture that Ambrake Corporation will benefit from.

During the October to December 1996 time period, Schultz had general discussions with Richard Stevenson of Ambrake, as to whether it would be prudent to relocate the entire caliper pin operation to Louisville. He testified that he was feeling Stevenson out, as Vico's largest caliper pin customer, concerning the wisdom of undertaking such a move. In late December 1996, Schultz independently made the decision to move the caliper pin operation, primarily because of the huge customer base now located closer to Louisville and the overcrowding of the Plymouth "blue room" production area. In conjunction with that decision, Vico began in January 1997, to stockpile caliper pins in the Plymouth facility to achieve its goal of reaching an 8-week on hand inventory.

2. The Union and events after February 1997

The Union commenced its organizing drive at Vico in February 1997, and a number of employees formed the UAW Volunteer Organizing Committee (VOC). On March 3, Chairman of the VOC Jim White, presented Schultz with a signed employee document that set forth the rights of employees under Section 7 of the Act and pointed out what specific acts would be illegal during the course of the organizing campaign (GC Exh. 17). On March 4 the Union distributed a newsletter throughout the facility and urged employees to seek answers to their questions from members of the VOC. On March 11 White handed a document signed by approximately 50 employees and titled "Sensible Rules for a Fair Election" to Schultz who read it but refused to sign or endorse it (GC Exh. 18). An additional union newsletter was distributed throughout the facility on or about March 14, and listed the names of Vico employees that supported sensible rules for a fair election (GC Exh. 20). Throughout the union campaign, there is no dispute that the Respondent was aware that employees openly wore union buttons to show support for the UAW.

In March 1997 Vico's president, R. Schultz, approached employees Jacqueline Whitehead and Lucy Arnold while they

---

[2] Caliper pins are manufactured by Vico and sold to customers for use in the production of automobile disc brakes. Their primary function is to attach the two housings of a disc brake caliper together. It absorbs vibration and noise when braking occurs and also helps determine brake pad wear.

[3] Sec. 9.2 of the loan agreement provides in pertinent part:

> Except as provided in this Section, machinery and equipment financed with the proceeds of the Bonds shall remain at the Project Site. The Company may, with the consent of the Bank, sell or remove any machinery and equipment comprising a portion of the Project so long as the removal of such machinery and equipment from the Project will not, in the opinion of Bond Counsel, impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

were working in the "blue room" and said, "Do you know what's going on around here?" Both employees said no. R. Schultz said, "Lucy, you know, don't you?" R. Schultz then said, "Well, if a Union gets out here, a lot of people could be laid off." R. Schultz then put his hand on Whitehead's shoulder and said, "If the Union gets in here, you can be laid off."

In late March or early April 1997, employee Fred Nitz was discussing the pros and cons of the Union with coworkers on the shipping dock when General Manager of Organizational Support Karen Dearing, came up to the employees and said, "You know that there are changes that are going to be made when the Union is voted in and there may or may not be jobs left. Nothing is in stone, nothing is permanent."

An NLRB election was held on April 17, and the Union won. Thereafter, on April 25 the Union was certified as the exclusive collective-bargaining representative of Vico's employees. In May 1997 UAW International Staff Representative Phillip Keeling was assigned to assist the newly certified Union to obtain its first collective-bargaining agreement with the Respondent.

Vico hired Martin Cibich as general manager of operations on March 2. On June 3 Cibich telephoned Stephen Daugherty, owner and manager of Doc's Crane & Rigging, and requested that Daugherty come to the Plymouth facility on June 8, a Sunday, to look at a number of machines that were to be moved to another facility. On that date, Daugherty along with his rigging forman, drove to Vico's facility and without employees present met with Cibich. During their walk through the Plymouth facility, Daugherty noticed a number of UAW stickers on toolboxes and asked Cibich whether there would be any labor problems if the equipment was relocated. Cibich replied "that he didn't feel there would be a problem." Cibich informed Daugherty that he wanted the equipment moved from the Plymouth facility to Louisville, Kentucky, on July 4.

Daugherty returned to his office in Indiana and several days after June 8, provided Cibich with an oral proposal to perform the work. On June 24 Daugherty telephoned UAW Representative Keeling and informed him that he previously visited Vico's facility on June 8, and after observing UAW insignia throughout the facility, he became suspicious when Vico wanted him to move six machines on July 4, from the Plymouth facility to another facility in Louisville, Kentucky. Keeling told Daugherty that he was surprised, as he was not aware of any plans to move machinery or portions of the plant and intended to raise the subject in a meeting with Vico scheduled on June 27.

On June 24 Vico executed a lease to acquire an additional 3600 square feet of space in Louisville. The building is not connected but is in close proximity to the other 10,800 square feet of space previously acquired in May 1996.

On June 25, in a prearranged meeting with the UAW employee bargaining committee to discuss the preparation of a contract survey in advance of negotiations, Keeling asked the employees if they had heard anything about equipment being relocated to Louisville, Kentucky. None of the employees on the UAW committee heard anything formally or informally about such a move and Keeling requested that they keep their ears to the grindstone.

On June 27 Keeling met with Schultz at the Plymouth facility. After discussing their respective organizational structures and Keeling apprising Schultz that he would be on vacation for the next 2 weeks during the normal summer shutdown of the automobile plants, Keeling told Schultz that he heard rumors about Vico planning to move some of its operations and equipment to Vico's facility in the South. Schultz replied "that may be something that may have to be considered in the future, but as it stood right then, there were no immediate plans to move anything out of the plant."[4] Keeling said, "well if that would come up, please contact us, we have a right to discuss that." That evening, Keeling telephoned UAW Committee Chairman Jim White and told him that he asked Schultz a question in their meeting about moving equipment from the plant and got no indication from Schultz that there were any plans to do so.

On July 2 Daugherty faxed and mailed a written monetary proposal to Vico for the relocation of the equipment (GC Exh. 29). On July 3 Vico sent Daugherty directions and maps for the Plymouth and Louisville facilities. After receipt of the directions, Daugherty had several telephone calls with Cibich in an effort to obtain a signature on the job proposal. Daugherty also spoke by telephone with Schultz on July 3 and told him it was necessary to get the proposal signed in order for him to perform the job.

On July 3 while at his vacation cottage, Keeling received a telephone call from his secretary who apprised him that she just received a fax transmission from Schultz concerning moving the caliper pin operation from the Plymouth facility to Louisville, Kentucky. Keeling instructed his secretary to fax him the transmission immediately.[5] Keeling drafted a response on July 3, faxed it to his secretary who finalized the letter, and forwarded it to Schultz.[6] On July 5 Schultz telephoned Keeling at

[4] Keeling's notes of the June 27 meeting reflect that Schultz said, "may have to move equipment to other plants as part of corporate strategy." (GC Exh. 11).

[5] The July 3 letter states:

> Over the last few years, Vico has pursued a gradual realignment of its core business by product category. In continuance of this realignment, Vico Products Co. will announce today its plans to move the machining operations for caliper pins to Louisville, Kentucky and will be available to discuss this issue at your earliest convenience. This movement will result in a loss of 29 employees at the Plymouth facility. We will consider all applications for the new job openings at the Louisville facility.

[6] The July 3 response states in pertinent part:

> I am very disappointed in the news that Vico is moving 29 jobs to one of its other plants, particularly in view of the tone and content of our meeting this past Friday. At this meeting you had many questions about the UAW, which I answered, and I asked you several questions about your business. It was my impression that you were sincere and forthright in our discussions and clearly indicated you wanted to develop a good relationship with the UAW and proceed to bargain in good faith to achieve a contract. I specifically asked about any plans Vico might have to move work from Plymouth to your facilities in the South. You did not indicate any such plans. Six days later, I now receive your letter announcing the company's "gradual realignment of its core business," and the news you are moving 29 jobs to Kentucky. I find it hard to believe that you were not aware of this plan when we spoke last Friday.

his vacation cottage and told him that nothing came up in their June 27 meeting about relocating work. Keeling replied, "[Y]ou knew very well what was discussed in the meeting." On July 6 Schultz sent a letter to Keeling responding to his letter of July 3 and their July 5 telephone conversation.[7]

On July 3 Schultz held a meeting at the Plymouth facility, and informed employees in attendance that because of the overcrowding of equipment in the "blue room," and since the primary caliper pin customers were located closer to Louisville, Kentucky, it was necessary to implement a workforce reduction due to the transfer of the caliper pin operation to Vico's facility in Louisville.[8] He further stated that effective July 4, approximately 33 employees hired since January 1995, would be laid off in order of seniority. Schultz also told the assembled employees that applications would be accepted if anyone was interested in applying for a position in Louisville.

On July 3, Union President Carl Bantau received a telephone call from a Vico employee who informed him that a layoff was just announced at Vico. Bantau left telephone messages for Keeling and White but independently decided that the Union would put up an informational picket line at the Plymouth facility on July 4.

On July 4 at 6 a.m., Daugherty received a telephone call from Cibich at his home. Cibich asked Daugherty whether he was in the Plymouth area and ready to proceed with the job. Daugherty said, "no, he would not do the job without a signed proposal." Cibich replied "that he already had another rigger lined up."

On July 4 at 7:20 a.m., Cibich telephoned Thomas Rahburg, the owner of Westland Rigging, and asked him whether he could immediately come to the Plymouth facility to look at some equipment to be moved. Rahburg went to the Plymouth facility around 8 a.m. on July 4, was shown the equipment, and Cibich asked him whether it could be moved immediately to Louisville, Kentucky. Rahburg told Cibich he could do the job and returned to his yard to prepare the trucks and assemble the forklift loading equipment. No discussion of price occurred on July 4. Around 9:30 a.m. on July 4, Cibich telephoned Rahburg and asked when he would have his equipment ready to start moving the machinery. Rahburg said he would be at the Plymouth facility in about a half an hour.

Bantau arrived at the Plymouth facility around 6:30 a.m. on July 4, and met Jim White and UAW Official Jim Gersik. Around 10 a.m. on July 4, Bantau and White observed the Plymouth police lead three flatbed tractor trailers and two pickup trucks into the plant entrance and proceed to the back of the plant. White observed the trucks leave the facility later that day loaded with machinery and he followed the trucks to the storage yard of Westland Rigging. Bantau received a telephone call around 2 a.m. on July 5 from a Vico employee who had followed the trucks to Westland Rigging, and informed him the trucks were moving. Bantau, along with White, and UAW officials Gersik and Gloria Ramirez drove to Louisville, arrived on July 7, and personally observed and took video tapes of the former caliper pin "blue room" machinery being placed inside two separate buildings and electricians installing electrical wiring.

In August 1997 the Respondent did not give employees an annual across-the-board wage increase. Vico did not inform the Union in advance of its decision not to grant the annual wage increase, nor did it engage in any collective-bargaining negotiations concerning this matter.

B. Analysis and Concluding Findings

1. Whether the Respondent's decision to eliminate the Plymouth caliper pin operation is a mandatory subject of bargaining

The Respondent contends that its decision to eliminate the Plymouth caliper pin operation is not a mandatory subject of bargaining.

The evidence conclusively establishes that the Respondent relocated from its Plymouth facility to Louisville, the equipment used to manufacture and produce caliper pins, and presently continues to perform in Louisville the same caliper pin work as had previously been performed by the Plymouth unit employees. Thus, the present case is one involving relocation of unit work.

As held by the Board, a decision to relocate unit work is one more closely analogous to the subcontracting decision found mandatory in *Fibreboard Corp. v. NLRB,* 379 U.S. 203 (1964), than the partial closing decision found nonmandatory in *First National Maintenance Corp. v. NLRB,* 452 U.S. 666 (1981). In *Dubuque Packing Co.,* 303 NLRB 386 (1991), enfd. sub. nom. *Food & Commercial Workers Local 150-A v. NLRB,* 1 F.3d 24 (D.C. Cir. 1993), the Board spelled out the following test for determining whether an employer's decision to relocate unit work is a mandatory subject of bargaining.

Furthermore, the timing of this announcement is odd. You knew I was going to be out of town on vacation and unavailable to discuss this matter, so, I can only assume the timing is some part of a corporate strategy. Also, I am sure your employees appreciated this news one-day before the July 4th holiday. While I had hoped, and you had led me to believe, that Vico and the UAW would develop a positive working relationship, your company's action will make that very difficult. If you follow through with this plan, the UAW will file every available legal challenge. Clearly, Vico's intent is to move its business, due to the recent certification of the Union at the Plymouth facility.

[7] The July 6 letter states in pertinent part:

I would like to respond in writing to your letter dated July 3, 1997 concerning our announcement to move certain jobs to our Louisville plant. I am, indeed anxious to meet with the Union to discuss issues relating to the move. Please be assured that our announcement was not made to coincide with your vacation plans. I am sure, however, you understand that our business decisions are based upon factors that cannot be subject to your vacation activities. Also, be assured that the move had nothing to do with the recent Union certification. Again I must reiterate from our phone conversation, that your statement in your letter regarding when we last met and your purported question about any plans Vico might have to move to other facilities astounds me. We met and discussed things in a very general sense. Had you raised the specific question, I would have been responsive to you. Your statement is totally inaccurate.

[8] The same slides with the concentric circles showing the caliper pin customers' proximity to Louisville, as was shown at the June 1996 employee meeting, was also shown to employees on July 3.

Initially, the burden is on the General Counsel to establish that the employer's decision involved a relocation of unit work unaccompanied by a basic change in the nature of the employer's operation. If the General Counsel successfully carries the burden in this regard, he will have established prima facie that the employer's relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the new location varies significantly from the work performed at the former plant location, or establishing that the employer's decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate.

Applying the *Dubuque* test, I find that the General Counsel has established that the Respondent's decision involves a relocation of unit work unaccompanied by a basic change in the nature of its operation. Here, the Respondent continues to manufacture and produce caliper pins at its Louisville facility. The Respondent simply moved closer to certain customers but did not undertake a basic change in the nature of its production operation. In sum, the Respondent is producing the same product for the same customers under essentially the same working conditions.

I further find that none of the defenses articulated by the Board in *Dubuque* are present in this case. As previously discussed, the work performed by the nonunit employees in Louisville is identical or substantially similar to that previously performed by the Plymouth unit employees. Thus, the caliper pinwork was not discontinued. Indeed, the Louisville facility independently advertised for workers with skills similar to employees in Plymouth and Schultz announced at the July 3 mandatory meeting in Plymouth, that employees impacted by the layoff could file applications for employment in Louisville, which would be duly considered. Thus, there was no change in the scope or direction of the enterprise. The Respondent continues to deliver its caliper pins to the same customers it previously serviced from Plymouth, asserting that it simply wished to do so more economically and efficiently.

The evidence further demonstrates that labor costs, both direct and indirect, were a conspicuous factor in the Respondent's decision to relocate the work. Indeed, in or around April 1996, Vico provided its primary customer, Ambrake Corporation, a press release in anticipation of opening the Louisville facility. The announcement points out the advantages that it sees in serving Ambrake including being only 55 miles from their plant which should reduce shipping costs and time, allow for daily pickup of parts and to begin a joint cost saving returnable container system. Board precedent holds that "quality control," i.e., labor efficiency and productivity, is an indirect labor cost factor. See *Bob's Big Boy Family Restaurants,* 264 NLRB 1369 (1982). In this regard, the Respondent asserts that it utilized a cost/benefit analysis to assist it in making the relocation decision. Included in the calculations, are considerations of labor costs (R. Exhs. 19–20). Lastly, the cell method of production that the Respondent implemented in Louisville, is in part indicative of labor cost considerations. Such a system allows an employer to consolidate processes and, essentially, produce the same product with less employees. Thus, labor efficiency and productivity played a part in the Respondent's decision to relocate the caliper pin operation to Louisville. Therefore, I conclude that labor costs were a factor in Respondent's decision to relocate the work.

I further find that the Union could have offered labor cost concessions that might have changed Vico's decision to relocate. In this regard, Schultz testified that the labor costs (wages and benefits) for the Louisville facility were higher than the labor costs in the Plymouth plant. Thus, the Union representing the incumbent workers has the ability to vary that differential and thereby influence the employer's decision through collective bargaining. Therefore, had the Respondent provided the Union advance notice of its decision to relocate the caliper pin operation to Louisville, and engaged in mandatory collective-bargaining negotiations, the Union could have offered concessions that might have changed Vico's decision to relocate the work. Likewise, Respondent argues that relocating the caliper pin operation to Louisville was projected to save freight costs as Vico would be closer to Ambrake, its primary caliper pin customer located in Kentucky, and could derive substantial savings in that area. I find that had the Union been given the opportunity to negotiate in advance of the relocation, they could have submitted bargaining proposals relative to the anticipated increased freight costs for Bosch, another major caliper pin customer, who was located in Michigan for whom caliper pins would now have to be shipped from Louisville. Indeed, Vico subsequently determined to relocate the manufacture of caliper pins for Bosch back to its Plymouth facility in December 1997.

Respondent also argues that even if labor costs were a factor in the decision, the Union could not have offered labor cost concessions that would have changed its decision to relocate, as it related to the concept of running the manufacturing process in a more efficient manner utilizing a cell operation for the production of caliper pins. Contrary to this position, I find that the Union could have submitted bargaining proposals concerning how people would be selected to run the cell operation machinery and possibly could have persuaded Vico, had it been notified and permitted to submit bargaining proposals prior to July 3, to have retained the Bosch caliper pin manufacturing work at the Plymouth facility using the cell method of operation rather then relocating the Bosch work to Louisville. Lastly, I find at no time did Respondent fully explain the underlying cost considerations to the Union and ask whether it could offer labor cost reductions that would enable the Respondent to meet its objectives. Rather, the relocation decision was presented to the Union as a fait accompli.

For all of the above reasons, I find that the Respondent's decision to relocate the caliper pin operation to Louisville was a mandatory subject of bargaining, and Vico violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain in good faith with the Union prior to relocating the unit work.

2. Whether the Respondent provided timely notice to the Union to enable it to negotiate over the effects of its decision to relocate the work and the layoff of 33 unit employees

The first time that the Respondent provided notice to the Union of the July 4 relocation and layoff of 33 unit employees took place on July 3 at 12:38 p.m., when Schultz faxed a one-page letter to Keeling's office. Keeling did not receive the document until 1:42 p.m., when his secretary faxed it to him at his vacation cottage. On that same day, the Respondent conducted a 2 p.m. meeting with its employees and announced the relocation of the caliper pin operation to Louisville.

It is well established that absent exigent circumstances, pre-implementation notice is required to satisfy the obligation to bargain over decisions that impact on employee conditions of employment. *Los Angeles Soap Co.,* 300 NLRB 289 (1990).

Applying this principal to the subject case conclusively establishes that the notice given on July 3, does not constitute sufficient advance notice to the Union so as to enable it to make a request to negotiate or submit bargaining proposals. Likewise, I find that the Respondent did not present evidence to establish that any exigent circumstances were present to undermine this requirement.

3. Whether the Respondent's decision to eliminate the Plymouth caliper pin operation was for the discriminatory purpose of retaliating against employees for selecting the Union

The General Counsel alleges in paragraph 15 of the complaint in Case 7–CA–40016, that the July 3 decision to lay off approximately 33 employees, and the July 4 relocation of the caliper pin operation from Plymouth to Louisville, Kentucky, was for the discriminatory purpose of retaliating against employees for selecting the Union as their representative in violation of Section 8(a)(1) and (3) of the Act.

Contrary to the General Counsel, the Respondent argues that it can show a substantial business justification for the lay off of employees and the relocation of the caliper pin operation to Louisville. It further argues that these actions were unrelated to the certification of the Union.

In *Wright Line,* 251 NLRB 1083 (1980), enfd. 682 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The Unites States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399–403 (1993). In *Manno Electric,* 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

The General Counsel alleges a number of factors to support its theory of violation. First, the Respondent leased an additional 3600 square feet of space on June 24, only 60 days after the Union was certified. Second, the Respondent previously contemplated the expansion of the caliper pin operation in Plymouth, and for that purpose applied for and received a $3 million loan from the Michigan strategic fund. It thereafter used these funds to purchase new machinery and committed to hire new employees at the Plymouth facility. Third, the Respondent's newsletters that issued in 1996 indicate no plans to move from or shut down any part of the Plymouth facility. Rather, the newsletters discussed the growth of the caliper pinwork in Plymouth, for which 18 new employees were hired. Fourth, the reasons asserted by the Respondent as motivating the relocation including the lack of space in Plymouth and the proximity of its customers to Louisville are unconvincing, particularly in light of Vico's customers' mix remaining essentially unchanged from the 1996 period when its plans were to expand the caliper pin operation at its Plymouth facility. Fifth, in March and April 1997, but before the Union's certification, two of Respondent's high level officials told employees that a lot of people could be laid off if the Union gets in and that changes are going to be made when the Union is voted in and there may or may not be jobs left. Lastly, it is suspicious in the June 27 meeting between Schultz and Keeling, that Schultz made no mention of the plan to relocate the equipment on July 4, especially in light of Schultz and Cibich's prior discussions with Daugherty to this effect.

Contrary to the General Counsel, I am not convinced that the caliper pin operation was relocated to Louisville on July 4, because of antiunion sentiment. In this regard, the following factors, which took place prior to and after the onset of the Union's organizing campaign in February 1997, militate against such a conclusion. First, Vico signed a lease for the acquisition of 10,800 square feet of warehouse and manufacturing space in Louisville on May 10, 1996, that provided for 400-amp electric service (the same service as in the "blue room") and a 48-inch fan with louver. The majority of the caliper pin equipment housed in Michigan was relocated to this facility. Second, in an employee meeting held at the Elks club in June 1996, Schultz told the employees in attendance that the caliper pin operation might be relocated to Louisville because it was closer to its core customers, and showed the same slides as on July 3, that depicted concentric circles with the location of the caliper pin customers and their proximity to Louisville. Third, Schultz credibly testified that he had general discussions in October through December 1996, with Richard Stevenson of Ambrake about whether it would be prudent to relocate the caliper pin manufacturing operation to Louisville. It was after these discussions that Schultz independently decided in late December 1996 to move the operation to Louisville and began to stockpile caliper pins in January 1997 in anticipation of the relocation.[9] Fourth, section 9.2 of the loan agreement with the

[9] Contrary to the Union's argument in brief, I conclude that Schultz made the decision to relocate the caliper pin operation to Louisville in

Michigan strategic fund contains provisions to be followed if the equipment is moved out of Michigan. The record establishes that Vico redeemed bonds in the amount of $1.3 million to reflect the equipment that was moved out of State, obtained the consent of bond counsel and its bank to do so, and filed the appropriate property and tax abatement returns that noted certain equipment was relocated outside of Michigan. Indeed, assistant attorney general for the State of Michigan, Tom Schimpf, testified that Vico is not currently in default with the strategic fund nor has anyone from the State of Michigan instituted action to compel the return of the equipment to Michigan. Fifth, although the General Counsel introduced testimony from three different employees that two high level officials of Vico (R. Schultz and Karen Dearing), in March and April 1997, separately told these employees that they could be laid off and changes are going to be made if the Union gets in, I note that these allegations were not the subject of individual unfair labor practice charges filed by the Union nor were they independently alleged in the complaint as 8(a)(1) violations of the Act. Since the decision to relocate the caliper pin operation was made before the onset of the union organizing campaign in February 1997, I conclude that even if the statements were made, they were uttered at a time after Schultz independently made the decision to relocate the caliper pin operation to Louisville. Moreover, at the time of the alleged conversations, R. Schultz was inactive in the day-to-day operations of Vico, and only visited the facility once per week for 20 to 25 minutes per visit. Likewise, even if Dearing made the statement attributed to her, I find it is protected under Section 8(c) of the Act. Sixth, it is undisputed that the caliper pin equipment was moved from its 2300 square foot location in the "blue room" to over 14,000 square feet in Louisville, which supports Schultz's contention that the "blue room" contained inadequate space to house the caliper pin operation and was one of the main reasons for the relocation. Lastly, I note that none of the bargaining committee members or the leading union adherents who served on the VOC were laid off on July 3, and the layoff was undertaken by following strict seniority guidelines. In fact, many of the "blue room" employees were reassigned to other positions throughout the plant based on strict seniority.

For all of the above reasons, I conclude that the caliper pin operation was not relocated to Louisville on July 4 because of antiunion sentiment. Moreover, I find under *Wright Line* that Vico would have taken the same action even in the absence of the employees protected activity. Accordingly, I recommend that paragraph 15 of the complaint in Case 7–CA–40016 be dismissed.

4. Whether Vico's refusal to continue its practice of granting an annual across-the-board wage increase violated the Act

The General Counsel alleges in paragraphs 9 through 11 of the complaint in Case 7–CA–40572(2), that in or around August 1997, Vico failed to continue its practice of granting an annual across-the-board wage increase to employees in the unit. The parties agree that for the last 10 years between 1987 and 1997, across-the-board wage increases were given to Vico employees between August and October of each year.[10]

On October 16 Keeling wrote a letter to Attorney Ruderman and requested additional information in order to develop an economic proposal in preparation for the parties' October 23 collective-bargaining session (GC Exh. 27).[11] In part, the letter requested a report on any across-the-board percentage wage increases for the last 10 years. By letter dated October 20, Vico provided a table showing wage percentage increases for a 7-year period between 1991 and 1997.

The evidence establishes and Vico admits that it did not grant an across-the-board percentage wage increase to its employees in 1997. Likewise, Keeling credibly testified that Vico did not give any prior notice to or engage in any bargaining with the Union prior to its decision not to give the across-the-board wage increase to its employees.

An employer may not unilaterally alter terms and conditions of employment without affording the union representing its employees a meaningful opportunity to negotiate. *NLRB v. Katz,* 369 U.S. 736,743 (1962). Pay increases or adjustments, which are established and regular events, are conditions of employment not subject to unilateral change. *Lamont Apparel,* 317 NLRB 286 (1995). In *Daily News of Los Angeles,* 315 NLRB 1236 (1994), the Board held that in its view, the standard set forth in *NLRB v. Dothan Eagle,* 434 F.2d 93, 98 (5th Cir. 1970), which looks to whether a change has been implemented in conditions of employment, captures best what lies at the heart of the *Katz* doctrine. It neither distinguishes among the various terms and conditions of employment on which an employer takes unilateral action nor does it discriminate on the basis of the nature of a particular unilateral act. It simply determines whether a change in any term and condition of employment has been effectuated, without first bargaining to impasse or agreement and condemns the conduct if it has. In the subject case, the evidence overwhelmingly establishes that Vico did not notify or engage in any negotiations with the Union prior to deciding not to give the annual across-the-board wage increase in 1997.

Vico argues that it did not grant the annual across-the-board wage increase in 1997 based on the contents of an August 11 letter that Attorney Ruderman sent to the Union. Specifically the letter, which is Ruderman's summary of what the parties agreed to after the first negotiation session on August 5, states in pertinent part that "the parties agree to discuss language issues first and then economics as a total package." I reject this argument for the following reasons. First, the August 5 letter is nothing more then Ruderman's summary of what the parties

December 1996 rather then in April 1996. In this regard, although Schultz testified that he knew when he opened the facility it was his intent to make caliper pins in Louisville, the record conclusively establishes that the decision to relocate the caliper pin operation to Louisville was not independently made until December 1996. Thus, I reject the Union's "Decision Date" claim and supporting arguments.

[10] The wage increase in 1987 was 4.3–4.5 percent, 1988 was 4.1–4.9 percent, 1989 was 3–4.3 percent, 1991 was 0 percent, 1992 was 5 percent, 1993 was 4 percent, 1994 was 3 percent, 1995 was 3 percent, 1996 was 4 percent, and in 1997 it was 0 percent.

[11] While 33 employees were laid off on July 4, the Union still represents approximately 80 bargaining unit employees at Vico. The parties continue to engage in collective-bargaining negotiations in an effort to reach an initial agreement.

agreed would be the format for negotiations. Second, the letter does not discuss or define what economics include and it certainly does not discuss the annual across-the-board wage increase given to Vico employees. Third, Keeling credibly testified that he first learned of Vico's practice to grant annual across-the-board wage increases to its employees in October 1997. Thus, I conclude that the Union could not have given up its right to negotiate over the across-the-board wage increase in the August 5 negotiation session, if it never was aware of Vico's past practice to give the increase until October 1997.

Under these circumstances, I find that Vico violated Section 8(a)(1) and (5) of the Act when it failed to continue its practice of granting an annual across-the-board wage increase to employees in the unit without prior notice to and affording the Union an opportunity to negotiate. Thus, the employees must be made whole for any loss of pay they may have suffered by reason of the Respondent's unilateral discontinuance of the across-the-board wage increase program. In addition, any increase must continue to be paid until changes in the program are agreed to or are lawfully implemented pursuant to a valid bargaining impasse.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including pressroom employees, thread roll employees, toolroom employees, quality control employees, shipping employees, inventory control employees, sorting/assembly employees, header employees, chucker employees and maintenance employees employed by the Employer at its facility located at 41555 East Ann Arbor Road, Plymouth, Michigan; but excluding all office clerical employees, other represented employees, guards and supervisors as defined in the Act.

4. At all times since April 25, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

5. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by its layoff of approximately 33 employees and unilaterally implementing its decision to eliminate the caliper pin operation at its Plymouth plant and relocating the machinery and work to its Louisville, Kentucky, facility.

6. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by its layoff of approximately 33 employees and unilaterally implementing its decision to eliminate the caliper pin operation at its Plymouth plant and relocating the machinery and work to its Louisville, Kentucky facility.

7. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by unilaterally changing the terms and conditions of employment of its employees without having notified or bargained with the Union in good faith to impasse with respect to the payment of annual across-the-board wage increases to unit employees.

8. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.[12]

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel has requested a remedial order which would require restoration of the Respondent's caliper pin operation at the Plymouth facility including returning the work and machinery and a convential reinstatement and backpay order for the laid off unit employees.

The Board, with Supreme Court approval, has ordered such a remedy where the relocation or other change in operation was effectuated in violation of the employer's bargaining obligation. See *Fibreboard Corp. v. NLRB,* 379 U.S. 203 (1964). The Supreme Court's decision in *Fibreboard* was cited as remedial authority by the Board in *Lear Siegler, Inc.,* 295 NLRB 857, 861 (1989), and by the Court in *Olivetti USA, Inc. v. NLRB*, 926 F.2d. 181,189 (2d Cir. 1991), cert. denied 502 U.S. 856 (1991).

I find that the present case is appropriate for a remedy, which would restore the status quo ante, including restoration of the unit operation and a conventional reinstatement and backpay order. In my opinion, in light of the Respondent's refusal to notify in advance and bargain with the Union before undertaking the relocation of the caliper pin operation, such a remedy is not unduly burdensome to Vico. The Plymouth facility remains open, functioning, and fully capable of handling the same caliper pin operation functions, which it performed prior to July 3. Unlike the facts in the subject case that establish an obligation to bargain over the decision to relocate the caliper pin operation, the cases cited by Respondent in their posthearing brief to support a remedy of not relocating the machinery back to Michigan, do not establish that the General Counsel alleged or argued that the decision was subject to a mandatory bargaining obligation.

Reinstatement for the laid off unit employees, without restoration of the Plymouth caliper pin operation, would not provide an adequate remedy. Absent restoration, there would not be positions available at Plymouth for the majority of the laid off employees. Likewise, it would be unduly burdensome on the employees to permit the Respondent to fulfill its reinstatement obligations by offering the employees positions at the Louisville or Sumter Vico locations.

I have also taken under consideration that the General Counsel petitioned for Section 10(j) injunctive relief in this case and on January 26, 1998, the Court approved a Consent Order among the parties. In this regard, the Order requires the return

[12] In view of my conclusions noted above, I decline to draw adverse inferences against Vico or to issue sanctions against Vico or Schultz as requested by the Union in fns. 1 and 7 of its posthearing brief.

of three chucker machines to the Plymouth facility and the call back in seniority of four employees from the July 3 layoff. Thus, the Respondent was aware at an early stage of the proceedings that the General Counsel was seeking a restoration of the Plymouth caliper pin operation.

Therefore, I am recommending that the Respondent be ordered to restore and resume its Plymouth caliper pin operation, to offer the laid off unit employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings and benefits that they may have suffered from the time of their layoff to the date of the Respondent's offer of reinstatement. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

With respect to the Respondent's unilateral discontinuance of the across-the-board wage increase, I conclude that Vico must immediately put into effect an across-the-board wage increase, and continue such increase in effect until it negotiates with the Union in good faith to a collective-bargaining agreement or reaches an impasse after bargaining in good faith, and make whole its unit employees for any loss of pay they may have suffered due to its unilateral change in the manner prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), with interest as set forth in *New Horizons for the Retarded,* supra.

As part of the remedy sought, the General Counsel also requests an extension of the certification year in which the Respondent is ordered to bargain with the Union, on request, in good faith for "the period required by *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962)."

The Board has long held that where there is a finding that an employer, after a union's certification has failed or refused to bargain in good faith with that union, the Board's remedy therefore ensures that the union has at least 1 year of good-faith bargaining during which its majority status cannot be questioned. *Mar-Jac Poultry,* supra.

In evaluating these factors, I conclude that a 1-year extension of the certification year is appropriate to start from the date the parties resume bargaining about the relocation of the caliper pin operation. Here, the Union was certified on April 25, and did not have 1 year of good-faith bargaining before Vico unilaterally relocated the caliper pin operation from Plymouth to Louisville on July 4. Thus, I find that a 1-year extension of the certification year will provide the parties with a reasonable period of time for negotiations but the Respondent's duty to bargain will not necessarily stop when the certification expires. Rather, the Respondent is ordered to resume negotiations and bargain in good faith for 1 year from the time it commences negotiations over the relocation of the caliper pin operation and, if an understanding is reached, embody it in a written agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, Vico Products Company, Plymouth, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively and in good faith with International Union United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO as the exclusive collective-bargaining representative of the employees in the appropriate unit by unilaterally eliminating unit positions, relocating or reassigning unit work to nonunit personnel, or otherwise changing the wages, hours, and other terms and conditions of employment of unit employees, without prior notice to or affording the Union an opportunity to negotiate and bargain concerning such changes or the effects of such changes.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore and resume its Plymouth, Michigan, caliper pin operation in a manner consistent with the level of operation that existed before the unit positions were eliminated on July 3; offer to the employees laid off on July 3, immediate and full reinstatement to their former jobs or, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits they may have suffered from the time of their layoff to the date of Respondent's offer of reinstatement, as set forth in the remedy section of this decision.

(b) Immediately put into effect an across-the-board wage increase, and continue such increase in effect until it negotiates with the Union in good faith to a collective-bargaining agreement or reaches an impasse after bargaining in good faith, and make whole its unit employees for any loss of pay they may have suffered due to its unilateral change in the manner prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), with interest set forth in *New Horizons for the Retarded,* supra.

(c) On request, bargain with the Union as the exclusive representative of its employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and embody any understanding reached in a written agreement.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Plymouth, Michigan facility, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 3, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

---

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."